

## **Issues of Legal Regulation of Administrative Court Execution in the Republic of Azerbaijan**

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**Abstract.** The court execution regarding the administrative disputes in the Republic is realized by administrative-economic courts and administrative-economic court collegiums. The review and solution of disputes emerged with the adoption of administrative acts by specialized administrative courts enables the implementation of main principles of a legal state. The administrative court execution is realized on cases emerged from disputable administrative-legal relations, is aimed at the solution of a dispute and envisages the execution of procedural remedial measures in case of necessity. The administrative court execution institute in its normative definition acts in the capacity of summary of administrative procedural norms regulating the public relations emerged during the solution of an administrative legal dispute in the trial process. The administrative court execution acts as complex and multi-area definition by its nature. It does not only have material-legal characteristics related to activities made within this Institute, but also possesses procedural-legal features related to the analysis of procedural forms in its application, as well as, to those related to traditional types of legal process.

**Keywords:** court execution, legal regulation, administrative legal dispute

**Introduction.** The administrative court execution is a court oversight on the legality in the activity of administrative bodies. A specific aspect characterizing this type of oversight is expressed in the verification of legality of power bodies' actions by the fair trial. The court oversight on the rule of law in state governance is an activity expressed in providing a legal assessment over the actions (inactions) and administrative acts of administrative bodies by court bodies. The court oversight on the activity of administrative bodies is reflected in the restoration of violated rights and positions of citizens. The peculiarities, such as, the possession of administrative bodies of privileged powers, public power, and sometimes their more limited action capability as opposed to subjects of private law are one of important basis of distinguishing the administrative court execution as one of independent types of court execution. The state

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through this form of court execution guarantees the protection of citizens' rights and interests from the ungrounded interferences of the government.

The normative legal basis of administrative court execution guiding to the Constitution of the Republic of Azerbaijan and national-historical statehood features, as well as, to advanced international best practices in addition to serving to its development, also serves to a more efficient protection of human rights and freedoms, formation of more progressive relations between the citizens and administrative bodies, of public trust towards court and elimination of corruption and bureaucracy cases.

The establishment of administrative courts in the Republic of Azerbaijan may be assessed as a natural continuation of strengthening the reputation of court power in a legal state. Although the formation of administrative economic courts partly conforms to the idea of specialized approach towards the organization of court execution in the country, in my opinion, there is a lot to be done for improving their work. In my view, first all of, the envisaging the administrative court execution as one of the forms of court execution in the Constitution and separation of administrative courts from economic courts is inevitable. Furthermore, a general concept should be drafted regarding the implementation of administrative court in the country, the scope of administrative jurisdiction should be identified, the special judges staff should be trained, as well as, inter-district administrative courts should be set up. In order to ensure the protection of citizens from anarchy of local executive bodies, the establishment of administrative courts in districts should serve the purpose.

Once the Republic of Azerbaijan restored its state independence, there was a need to implement reforms in legal area for future development of society, and to form the legal and court system and legislative framework based on completely new progressive and democratic values. The human and citizen rights and freedoms were assessed as superior value in the first national Constitution of the Republic, their protection was considered to be the duty of legislative, executive and court power bodies. The wide complex of humans' natural, indivisible rights as important principles of a legal state was specified in the Main Law on the superior level, and the principles of reliable protection of their legal remedies were fully reflected in the legislation.

In the III Chapter entitled as "Basic Rights and Liberties of a person and citizen" of the Constitution, everyone from the moment when they are born possesses inviolable and inalienable rights and liberties. It stipulated the courts which resolved the disputes arising with respect to violation of human and citizen rights and freedoms. The courts realize one of the main functions of the state in supporting the discipline and peace in the society, ensuring the statehood, and stable solution of disputes.

Currently the achievements made in the area of court-legal reforms and legislation were based on the Constitution of the Republic of Azerbaijan and this superior normative document will in the long term identify the strategic, sustainable development targets of the state.

The reforms implemented for ensuring and protecting human rights and freedoms in the modern times, as well as, the adoption of new legislative acts, improvement of the legislation in effect, establishment of new court system, identification of uniform implementation rules of administrative courts, the court oversight over the activity of administrative bodies, adjustment of remedial mechanism of rights, of national legislation to international standards functioning in the European legal environment plays an important role among the reforms conducted in the country.

As is known, one of the main requirements of a legal state is the identification of state responsibility in front of general society and individuals, increase of the role of democratic institutions in the country, the specification of citizens' appeal right against the acts, actions and inactions harming their rights and positions in order to avoid the anarchy in the activity of state bodies and presence of actual opportunities. The existence of actual court oversight is considered to be the main reliance source of a citizen against the administrative court possessing the government powers and public influence.

A good significance is drawn towards the fight against the bureaucracy and bureaucratic approaches impeding the protection of human and citizen rights, outdated governance methods, anarchy, corruption and bribery in the process of expedient and consequent reforms conducted in the Republic stepping confidently towards legal statehood building. The formation of actual guarantee mechanism for simplifying the governance, the response to the applications of citizens to state bodies on a timely and duly basis, prevention of abuse of administrative bodies from their powers, protection of citizens' rights and positions from groundless interferences acts as one of the priority issues. The legislation envisions several protection mechanisms of citizens rights against the illegal act and action (inaction) of an administrative body possessing the power authority one of which is the administrative court execution.

This form of state court execution ensures the protection of citizens' rights and interests from groundless interferences of government. The existence of administrative court execution organized on a high level and ensuring the rights and freedoms of citizens and legal persons in the modern period is characterized as one of important features of a legal state. The administrative court execution being in close connection with the content and principles of a legal state acts as a legal remedial means aimed at

avoiding the anarchy and bureaucracy and corruption cases and ensuring the legal operation of administrative bodies.

The conducted reforms adhere to modern perceptions with respect to relations between the state and the society, between administrative bodies and citizens. The reform measures also revealed the necessity for a new approach towards “citizen-state” accordingly, elimination of social concerns, and identification of new solution ways of legal and efficient activity of administrative bodies and the inevitability of a modern approach manner was accepted. In this respect, profound changes were made to the legislation, some important normative acts were adopted, the court system was re-established, the administrative court execution was formed as one of the independent means of court execution. The formation of administrative court execution as one of independent means of court execution comprises an actual implementation mechanism of the responsibility probability in an administrative claim raised against any decision, action or inaction adopted by administrative bodies, and the responsibility mechanism of administrative bodies before society. The administrative court execution is an important means in ensuring the lawfulness, transparency and efficiency in the activity of administrative bodies and prevention of corruption.

#### **Role of administrative court execution in a legal state mechanism**

The court execution regarding cases over administrative disputes was expressed with the “administrative court execution” definition in administrative procedural legislation of the Republic [3, p.14].

It should be noted that the following is specified as three main reasons for distinguishing the administrative court execution from other court executions in scientific-legal literature:

- 1) necessity of specialization for reviewing administrative acts;
- 2) possession of a state body of rights and authorities in administrative law in case of existence of equality of rights and interests between individuals in particular together with free willpower;
- 3) the goal comprisal of ensuring legal action by a body adopting the administrative act as the goal of administrative court execution [14, p.9].

I assume that I may analyze the administrative court execution from two aspects as a guarantee of a legal state activity: 1) as a summary of legal-procedural means aimed at protection of subjective general rights, freedoms and positions protected by law of citizens by means of reviewing and resolving the administrative legal dispute at specialized courts; 2) as a court oversight institute realized over general governance, norm establishing and law enforcement activity.

The activity of state bodies in a legal state is based on the rule of law and justice, the procedural rules of relations between them and the citizens are defined by law. The opportunity for citizens whose interests were violated for influencing the adopted administrative acts is absolutely established in the law. The administrative bodies act as legal subject having possessed the special power authorities, but with these authorities being limited with rights of other subjects.

In the process of legal statehood followed with the declaration of formal legal equality, the provision of equality in legal positions of citizens, of the welfare level of country population, of the assessment right of legal protection of population and most importantly, of administrative acts is of great significance. As mentioned fairly in the literature, in the democratization of society, a special attention should be drawn to measures on strengthening the internal oversight and liability of individuals in governance, the administrative governance methods should be substituted with democratic collegial methods, and public oversight [8, p.43].

Currently, the Republican legislation envisages several mechanisms for protection of citizens' rights against the illegal administrative act and action (inaction) of an administrative body possessing the governance authority (for example, administrative appeal right, ombudsman institute, etc) one of which is the administrative court execution. It should be mentioned that the stipulation of court protection mechanism of citizens' rights and positions against the illegal actions and decisions of administrative bodies in the legislation is an important factor of a legal state development. The court protection in the literature is fairly considered to be a main tool for resolving social disputes, relations and conflicts in the society [7, p.128].

General or specialized courts realize the administrative court execution depending on the court system in a legal state. As is known, the protection mechanism through courts is the main protection mechanism which comes from the fact that the direct determination of the court is the human rights protection. The administrative court execution is the main form of court oversight realized over the activity of administrative bodies.

The court execution regarding the administrative disputes in the Republic is realized by administrative-economic courts and administrative-economic court collegiums. It should be mentioned that the review and solution of disputes emerged with the adoption of administrative acts by specialized administrative courts serves the execution of main principles of a legal state.

The administrative court execution is realized on the cases emerged from the disputed administrative-legal relations, is aimed at the solution of a dispute and envisions the administration of procedural protection measures upon necessity. The administrative

court execution acts as summary of administrative procedural norms regulations the public relations emerged during the solution of trial process of an administrative legal dispute in the normative concept. The administrative court execution has a complex and multilateral definition from the viewpoint of its nature. It has not only material-legal characteristics related to actions within this institution, but also procedural-legal characteristics related to comparison with traditional types of their legal process, and analysis of procedural forms where applied. A.K.Salavyova defines three aspects of administrative court execution:

- material aspect related to nature of administrative legal dispute;
- organizational aspect – conditioned with existence of special bodies reviewing the administrative legal dispute;
- formal aspect conditioned with existence of special procedural norms and court review rules [17, p.53].

The administrative court execution is a court oversight realized over the rule of law of administrative bodies' activities. The specific feature characterising this type of oversight is expressed in the verification of lawfulness of actions of government bodies by fair trial bodies. F.S.Mehdiyev fairly considers the court oversight as the most efficient way of defining the adherence to law by officials [10, p.67].

The court oversight over the rule of law in state governance area is an activity of court bodies expressed in providing legal assessment towards actions (inactions) and administrative acts of administrative bodies. The literature fairly notes that when the society trusts and grants one the governance authorities, no matter how much the trust is, it should also established an oversight body for it [10, p.67].

The result of administrative acts in the breach of human rights is one of strong assumptions. The realization of court oversight over the legality of administrative bodies' activities enables hearing the voice of the civil society (democratic governance), and an opportunity not to agree with acts not corresponding to its interests and dispute the administrative acts (administrative justice).

It should be mentioned that the existence of specialized court oversight emerged from the civil application over the activity of state bodies is one of highly valued achievements in international arena. The oversight helps the humans to recognize themselves as personality, evaluate themselves and their potential opportunities, and to form their relevant claim level [8, p.42].

Thus the following main features of court oversight realized over the activity of administrative bodies based on the analysis of the legislation in effect, and multiple scientific reviews can be defined:

1) such court oversight is realized by court bodies depending neither organizationally, nor functionally from the the controlled object;

2) the court power acting as one independent, mutually balanced power branch through such court oversight acts as guarantee for rule of law and avoidance from power abuse in the activity of administrative bodies.

3) such court oversight is conducted in the framework of trial process and regulated through the norms of administrative procedural law.

4) the court and an administrative body acts as mandatory participants of special type of procedural relations emerged in the process of such court oversight;

5) the administrative legal dispute forms the basis of such court oversight;

6) such type of court oversight is of double purpose: the provision of protection of rights and legally protected interests of physical and legal persons and prevention of anarchy in the activity of an administrative body with the goal of protecting public interests.

As already mentioned, the oversight authority of courts over the activity of administrative bodies is not really unlimited. The following guidelines may be defined limiting the court oversight reflected in administrative court execution:

1) A person whose rights and legally protected interests have been violated should appeal to the court with the claim for initiation of functioning of such oversight mechanism;

2) the principle of claim possibility should be followed. According to the Article 35 of the Administrative Court Execution of the Republic of Azerbaijan, the refusal is considered possible as to adoption or non-adoption of administrative act in the claimant's claim application, or in cases of justification of violation of his rights and legally protected interests due to action or inaction of an administrative body, a claim regarding the disputing, forcing, with respect to fulfillment of obligations and decline regarding doing certain actions;

3) raising claim at trial does not cause automatical execution of protection measures of temporary nature. According to the Article 40 of the Administrative Court Execution of the Republic of Azerbaijan, the person concerned may appeal to the court as to taking other guarantee measures aimed at ceasing the execution of an administrative act or providing the claim (protecting the claimant's rights) until the raise of claim in court or at the same time with claim, or in the court of trial implementation. The court may impose a duty over the responsible person in the capacity of remedy measure of a temporary nature as to doing certain actions or refraining from doing certain actions, or bearing certain actions. According to the Article 43.1 of



Administrative Court Execution of the Republic of Azerbaijan,, the application basis of temporary remedy are the following:

- necessity of initial urgent regulation due to the reason of impossibility or further complication of protecting (providing or restoring) the rights of an applicant (claimant) in case of change of an existing situation;

- identification of probability as to the existence of claimant's material requirement during the initial court investigation;

4) the complaint regarding the commencement of an administrative court execution does not cause the cease of implementation of the administrative act. According to the Article 41 of Administrative Court Execution of the Republic of Azerbaijan Court may issue a ruling on suspension of administrative act based on claimant's motion, if it comes to conclusion, as a result of preliminary examination of factual and legal merits of a case, that the action will most probably be successful. If the chance of success is not clear, court shall have to issue a ruling after comprehensive evaluation of contradicting interests. Court may also issue a ruling on suspending the execution of administrative acts under certain conditions.

5) in the order of administrative court execution, only the lawfulness of administrative bodies' activities is verified, the purposeful criteria is not checked, etc.

The court oversight over the activity of administrative bodies is reflected in the restoration of violated rights and interests of citizens. The characteristics like the possession of administrative bodies with privileged authorities, public power, and sometimes their more limited capacity to act than the special right subjects, is one of important basis of distinguishing the administrative court execution as one of independent types of court execution.

The state through this form of trial implementation guarantees the protection of citizens' rights and interests from groundless interferences of government. The legal literature notes that the existence of administrative court execution ensuring the rights and freedoms of citizens and legal persons, and organized on a high level, is one of important features of a legal state [1, p.124]. The citizen's only place for support against the administrative bodies which have power authorities and public influence is the existence of efficient court oversight.

The court oversight as the most efficient way for ensuring the lawful activity of administrative bodies along with protecting the citizens from their anarchy, also helps to refrain those bodies from a behavior contradicting the public interest.

One of the issues in the frontline of court-legal reforms conducted in the country is the formation of public trust towards courts. The public trust has been adopted as one of important features characterizing the court. As known, the trust towards fair trial in



public emerges not with formation of formal procedures and principles, and normative framework, but with respect to efficient work of the court and actual oversight opportunities. For the court to form an image of “protector of violated rights and freedoms, interests”, it should possess an actual oversight authority over the activity of administrative bodies.

The efficiency of fair trial cannot be just defined according to quantity indicators. The efficiency indicators may refer to multiple criteria, such as, an easy access to an information related to court and its activities, an appeal opportunity against all decisions of administrative bodies to court, procedural condition of the parties at the court, burden of evidence, actual liability mechanism of administrative bodies, scope of court power, quality of court judgements and their implementation status.

### **Normative-legal basis of administrative court execution in the Republic of Azerbaijan**

Currently the normative legal basis of an administrative court execution include the following in the Republic of Azerbaijan: the Constitution of the Republic of Azerbaijan, the Law of the Azerbaijan Republic “On Courts and Judges”, the Law of the Azerbaijan Republic “On Administrative Implementation”, the Administrative Procedural Code, the decisions on administrative cases of the Supreme Court, international agreements to which the state is signatory, etc.

As known, a legal state relies upon the constitution. The Constitution defines the relations between the political government and an individual, the government authorities, an individual’s rights and freedoms [11, p.292].

Upon the restoration of state independence of the Republic of Azerbaijan, the first national Constitution was adopted with all-nation voting. The Constitution comprising the basis of the national legislative system and all legal system stipulated ensuring the rights and freedoms of humans and citizens as the supreme goal of the state and their adherence and protection as the duty of state bodies. The legal principles of state and society life was reflected, the main directions of many aspects of the law, including administrative law development were identified.

The principles of power division as the main principle of a legal state also found its reflection in the constitutional order. According to paragraph 4 of the Article 7 of the Constitution, the legislative, executive and court powers were identified to function in close interaction and their independence within their powers. Each branch of government has its own place in the general system of state government and each fulfill their functions assigned upon them. The balance of governments is maintained through

special organizational-legal means, which ensures not only mutual activity, but also mutual limitation of powers in a defined range. The literature fairly mentions that the division of three relatively free and independent areas of a uniform state power prevents the abuse and emergence of a totalitarian governance that is not related to law by state [13, p.55].

The power division principle is the mutual ratio principle of power within a state [2, p.50].

It is known that the power division principle as an important element of a democratic state envisions both the functional division of government and mutual oversight of power branches over one another. With that respect, the activity area of administrative courts is limited with relevant ranges as well. This limitation arises from the essence of a democratic governance. As such, one of fundamental principles of democratic governance comprises the non-permission of anyone stand above the law.

The legislative government considering this principle in the formation of a normative-legal basis of an administrative court execution as one of important provisions of lawfulness, based on the division of power principle and limited the authorities of administrative courts by ensuring the functioning of administrative bodies within the legal framework. The administrative court although serves the protection and defence of rights, freedoms and interests of citizens by ensuring the activity of an administrative body within the law, it does not have unlimited authority. The respectful approach principle towards discretionary powers of an administrative body should be adhered in the administrative court execution. The discretion means that the activities of administrative bodies are not identified univocally and precisely and the administrative bodies are allowed to act based on their own assumptions [11, p.86].

However, such power envisages the choice of a type of action by administrative bodies based on their assumptions by guiding to main values assigned to them by law, not as anarchy by those bodies. Accordingly, an administrative procedural legislation in case of contradiction of an administrative act with the law and as a result, violation of claimant's rights, empowers the court to annul (the relevant decision of a complaint instance in case of an administrative complaint to a complaint instance) that administrative (Article 70.1 of Administrative Procedural Code). The court, as a rule, when adopting a decision based discretionary authority by an administrative body, may not adopt a decision according to claimant's demand when the application conditions of a material law norm referred to by an administrative body are identified according to its own assessment of that body or when an assessment freedom is granted to an administrative body with respect to application of any legal norm or when it is necessary to continue the investigation for adopting the administrative act and when it is

not possible to implement such investigation within the court review in an independent manner by a court [3, p.55].

Although the court assesses the disputed act of an administrative body by a legal viewpoint and adopts a decision instead, it should not assess that act from the purposeful point of view. The exception to this rule comprises only the legal verification of discretionary powers from purposeful point of view. As such, the administrative procedural legislation envisions the verification of administrative acts based on discretionary powers or possibility of a court oversight over those acts. In case of an administrative body functioning based on discretionary powers, the court also verifies as to the legality of not adopting an administrative act from the perspective of non-adherence to ranges of discretionary powers established by law and non-realization of discretionary right according to the purpose of those authorities [3, p.56].

Thus, the Main Law stipulated the functioning of state bodies according to essence of democratic and legal state in their activities and in their relations with citizens. When we come up in a broader sense, each provision of Constitution or any democratic institution stipulated by it, although not directly, but indirectly acts as provider of rights and freedoms. The source of liability mechanism for protecting the rights, freedoms and legal interests of individuals against the decisions and actions of state bodies and their authorized officials arises from the the Constitution. From this angle, the Constitution may be assessed as initial guarantee of formation of an administrative court execution and as foundation of its normative legal framework.

The Constitution devoting one third of its part to stipulation of humans' and citizens' rights and freedoms fully and thoroughly covered human rights and freedoms specified in general Declaration on Human Rights, International Pact "On Economic, Social and Cultural Rights", "On Civil and Political Rights", Convention "On Protection of Human Rights and Main Freedoms", and other international agreements related to human rights. With respect to essence of a legal state, the Main Law identified the non-acceptance of limiting the realization of rights and freedoms, and of non-acceptance of any provision of Constitution as provision aimed at elimination of human and citizen rights and freedoms. A guarantee for protection of everyone's rights and freedoms at court was granted (Article 60 of the Constitution). The court provision, on one side, identifies everyone's appeal right for restoring their rights and freedoms, and on the other hand, the duty for courts to review those applications and adopt a fair decision related to them [5, p.180].

The Chapter III entitled as "Basic Rights and Liberties of a Person and Citizen" of Constitution envisioned the right of protection of human and citizen rights and freedoms. Everyone is entitled to protect their rights and freedoms by means and

methods not prohibited by law. The content of protection right includes the opportunity for appealing against the decisions and actions (or inactions) of authorized officials by state bodies, political parties, trade union confederations and other public unions. According to Article 71 of the Main Law, the court resolves the disputes with regard to violation of human and citizen rights and freedoms [4, p.24-25]. The necessary condition of Constitution, democracy and a legal state is not to allow the arbitrarily impeding the realization of main rights and freedoms by political government and administrative bodies.

The Law of the Azerbaijan Republic “On Courts and Judges” dated 10 June, 1997 as one of normative-legal basis of administrative court execution identifies the main provisions of fair trial and court system. With the amendment made to Article 19 of the Law dated 22 June, 2010, the administrative-economic courts were created in the basis of local economic courts. The Law defined the authorities of administrative-economic courts, their organizational order and composition. According to the Law, the administrative-economic courts are organized according to administrative territorial units or free economic zones. The administrative-economic courts review the cases related to administrative and economic disputes referred to their powers by law as first instance courts, analyze the court statistics, studies and generalizes the organizational situation of court activity, the court experience, and executes other powers assigned to them by Republican legislation.

It should be noted that that Law although defined the review of cases on administrative and economic disputes by administrative-economic courts as first instance courts, does not bring clarity as to the powers they have with regard to disputed act or action (inaction). This issue is regulated with the Administrative Procedural Code of the Republic of Azerbaijan.

As abovementioned one of normative basis of administrative court execution is the Law of the Republic of Azerbaijan dated 21 October, 2005, “On Administrative Implementation”. With the goal of forming uniform procedures for administrative implementation standing in the grassroots of administrative disputes, the definitions of administrative body, administrative implementation and administrative act and the classification of administrative acts was identified in the Law for the first time in national legislation history. The Law by stimulating the development of relations between the administrative bodies and citizens in a new manner, also founded the positive administrative law in national legal system. The initial background was set in order to form a “positive” administrative legal doctrine instead of a “negative” administrative law inherited from the Soviet period. The literature fairly mentions that the administrative law section in the given law provided a basis for forming new

theoretical views [6, p.15]. The identification of form of an administrative act in the Law, its requisites, requirements regarding its content played a crucial role in the formation of a uniform administrative experience in the country, legal framework in the activities of administrative bodies, as well as, in the application of uniform verification criteria in the administrative court execution.

The administrative implementation in the Republic was identified to be realized based on procedural provisions envisioned in international agreements to which the Republic is signatory and the Constitution, as well as, uniformly accepted principles of law and legal state. The Law also stipulates the legal basis, principles and provisions, procedural rules, and participants of the activity conducted by administrative bodies with respect to adoption, execution or elimination of administrative acts.

It should be noted that the clear specification of administrative implementation rules is important for providing the legal order in the country, the rights and freedoms and interests of citizens protected by law. As noted in the literature, for the state to become the creator and “protector” of legislation, it should realize its government functions based on and in the framework of laws in effect without exception. In the meantime, the state should also prevent any irregularity from happening either by its bodies and authorized officials, or by citizens [9, p. 238]. From this angle that law serves the regulation of relations between citizens and administrative bodies, simplification of administrative governance and increase of efficiency, arrangement of issues related to liabilities of administrative bodies and authorized officials, as well as, establishment of adequate legal provisions and protection mechanisms within administrative implementation. Namely the uniformity, transparency and simplicity of implementation rules may protect the people from the anarchy and bureaucracy [9, p.17].

It should be noted that one of important characteristics of the law comprises the information pertaining to possible legal remedies against that act, the usage period of these legal remedies and a body (bodies, including the court) to which the person concerned may file a complain (or a claim) complaint of the person concerned in that respect among the requisites of a written administrative act. (Article 59.1.5 of the Law). Because, the formation of uniform administrative implementation rules, and of administrative practice ultimately serves the protection of citizens’ rights and freedoms. If citizens are not aware of information related to legal remedies which they are entitled for, these means may not turn into functioning mechanism and bear an actual significance. The possible legal remedies from the administrative act, rules and period for using (complaining) these legal remedies serves the protection of an individual’s rights and interests. The non-indication of period and methods of complaining in the

administrative act adopted by an administrative body should be accepted as not putting the period requirement against the interested persons in fact. It should be mentioned that the awareness of an individual in advance of the decisions adopted or services provided by administrative bodies and provision of their participation in such activity also plays a great significance in terms of ensuring the participation right in the governance of state.

It is noteworthy that in the Recommendation Decision R(87)16 regarding the administrative implementation affecting few persons” of the Committee of Ministers of the Council of Europe “The European Code of Good Administrative Behaviour” adopted by European Parliament the specification of possible legal remedies from the administrative act is considered to be an important measure in the protection of rights and interests.

Thus, by envisioning the information pertaining the possible legal remedies against the administrative act, their usage period and a body (bodies, including the court) to which the person concerned may file a complaint (a claim), may be assessed as one of main provisions of administrative law adopted by member states and identified by European Council.

Currently, the procedural rules for organizing the administrative court execution and of their activities are identified with the Administrative Procedural Code in the Republic. The Code regulating the administrative court execution is considered to be procedural basis of the activity of administrative courts. The Administrative-Procedural Code is a uniform legislative act envisioning the systematized order of administrative procedural legal norms and regulates the complaint order for citizens against the acts or actions (inactions) of administrative bodies, and the rules for raising and solution of an administrative case. The Code may be characterized as having predominant legal effect among other area codes with a wide scope social regulation, with complex setting, legal and logical integrity, and compactness.

The Administrative Procedural Code of the Republic of Azerbaijan was adopted on June 30, 2009 and entered into force since January 1, 2011. The legal framework of administrative court execution was formed with the adoption of the Code comprising 18 chapters and 130 Articles, taking into account the specificity of relations regarding the administrative disputes, the specialized approach for reviewing them at court was reflected in legislation. Currently the types of administrative claims not considered as special type of claim and regulated in the general order until the adoption of Code, the procedure of raising the administrative case in court, the main principles of administrative court execution were identified in the administrative procedural legislation. The stipulation of participants of administrative court execution, claim



period, remedial measures of temporary nature applied in the court order in the legislation acted as manifestation of conditioning the administrative court execution as one of independent branches of court execution.

We should mention that the formation of administrative court execution as one of branches of court execution established an actual implementation mechanism of probability of being liable to claim raised against any decision, action or inaction adopted by administrative bodies, and the liability mechanism of those bodies. This was a significant measure also for ensuring lawfulness, transparency and efficiency in the activity of administrative bodies, and preventing the corruption. As such, one of duties of administrative court execution comprises minimizing the level of bureaucracy and corruption.

At the same time, the Administrative Procedural Code of the Republic of Azerbaijan may be assessed as a logical follow-up of the Law “On Administrative Execution”. Because the administrative court execution is initiated when an administrative dispute emerges between a citizen and an administrative body in case of non-adherence to administrative implementation rules. With the Administrative Procedural Code of the Republic of Azerbaijan a new area of national legislation system – an administrative procedural legislation and a new legal area in law science – the foundation of administrative procedural law was set. It is noteworthy that for administrative law, as the innovation of administrative court execution, the administrative procedural legislation for national legislative system, the normative legal framework for administrative court execution is an innovative area. This area is going through its development period.

The administrative procedural legal norms to their content are divided into two groups in legal literature. The first group include the norms pertaining to organization, elimination and setting of governance apparatus, the second group includes the norms identifying the execution rules of separate administrative cases [2, p.13]. In my view, acting of institutes regulated with these norms as subject of scientific researches, improvement according to changes occurring in society will ultimately pave the way for development of administrative procedural law as a new legal area. The court decisions adopted as a result of administrative process will accordingly cause the development and improvement of administrative law. It is known that the courts significantly contribute to rationalization of administrative procedural law and development and improvement of its main principles (for example, objectivity, justice, balance, etc.).

Thus, the themes (for example, administrative implementation, administrative justice, administrative claim, etc.) studied previously as a subject of administrative law, already act as legal institutes based on administrative procedural legislative basis. The



adoption of issue in parallel with enriching the Code drafting traditions in the national legal system, resulted in the stipulation of new administrative procedural legal institutes, enrichment of administrative legal terminology, and finally, the formation of special conditions and area principles of administrative process.

The first paragraph of Chapter I entitled as “General Provisions” of Administrative Procedure Code of the Republic of Azerbaijan defines its scope of application. It is noted that the Code defines the court relevance of disputes (administrative disputes) related to administrative legal relations, procedural principals and rules of reviewing and resolving those disputes in trial. That chapter stipulated the rule of adopting a court decision, mobile assemblies of administrative-economic courts or court collegiums, the rule of conducting a work division, the cease of implementation on the case with regard to dispute, as well as, rules for identifying the court relevance and an authorized court on area relevance [3, p.14].

While dealing with administrative procedural legislation in effect, the reflection of a legal representative institute as novel should be mentioned. As known, in the previous legislation, participation of a legal representative was not allowed in the court execution over the cases emerged from administrative relations. Such case in literature was being explained with the ability of individuals of functional ability to be participants of administrative legal relations [19, p.248]. Currently, according to Article 26.3 of Administrative Procedural Code of the Republic of Azerbaijan the persons with limited or no functioning ability are also represented in the administrative court execution according to relevant provisions of Civil Procedural Code.

As already mentioned, one of main purposes of administrative process is the restoration of violated rights and interests of participants of administrative legal relations. Such administration is conditioned with the own essence of administrative law emerged as the right for protecting a citizen from administrative government’s anarchy and oversight right [12, p.137]. If previously the administrative law was aimed at protection of an administrative apparatus of a state, currently, it is focused on regulating the public relations between a state, state bodies, their authorized officials and citizens. It is not by coincidence that the main purpose of modern administrative law is to estimate the balance of inevitable power differences between a state and a citizen. Accordingly, one of functions of administrative court execution is the restoration of interests protected by law. One of reasons of an administrative dispute occurrence is namely the conflict of interests of administrative law relation subjects in state governance area [16, p.134]. Therefore, the fair trial executed in administrative process by being aimed at the solution of an administrative dispute is reflected namely in the restoration of violated rights and interests of citizens.

An administrative legal dispute is a disparity of opinions between an administrative body and a citizen expressed in actions of legal significance by arising from the different understanding of lawfulness of administrative acts, actions (inactions) and from violation of rights and interests protected by law. The dispute is assessed as manifestation conditioned from different demands of social subjects, goals and interests, as well as, roles and functions and social status, characterized with counter activities, and emerged in a mutual social activity process [18, p.61]. The legislation accepting the interests as basis of emergence of administrative dispute envisions a person and collective interests as basis of raising administrative case in administrative procedural legislation. Because, the administrative case is caused by administrative dispute expressing the conflict of interests or views. The claimant's personal interest may be of legal, economic or ideal nature. In cases of justification of violation of interests due to refusal from adoption or non-adoption of an administrative act or due to action or inaction of an administrative body with the goal of protecting the collective interests the non-governmental organizations (public associations or funds) also allow raising the claim envisioned in Article 35.1 of Administrative Procedural Code of the Republic of Azerbaijan.

It is known that the execution of act is understood as manifestation in material work of results created by it in the legal concept. Although the claimant may achieve the annulment of an administrative law contradicting the law through the claim on disputing the administrative act, but does not have an opportunity to demand the cease of executing the administrative act in time, the court execution although results in provision of his claim, but it may remain inefficient. From this view, the stipulation of temporary nature remedy measures in legislation is of crucial significance.

The temporary remedial measures as one of novel cases for administrative procedural legislation are aimed at protection of claimant's rights to its essence and are called "initial protection institute". These measures may envision the cease of execution of disputed act, prohibition of doing or not doing certain actions and assignment of the duty on tolerating certain actions to a responsible person. According to Article 40 of Administrative Procedural Code of the Republic of Azerbaijan an interested person may appeal to the court with application for ceasing the execution of an administrative act or taking other provision measures (temporary nature remedial measures) aimed at providing the claim (protection of claimant's rights). The court may impose duties on the responsible person, and in case of presence of legal basis, on third parties for doing certain actions, refrain from doing certain actions or tolerate certain actions [3, p.14].

It should be noted that the Recommendation P(89) 8 of Cabinet of Ministers of the Council of Europe dated 13 August 1989 on Initial Court Protection over

Administrative Cases also comprises the temporary cease of act execution as one of measures applied by court as initial court protection institute. The recommendation assesses the initial court protection institute as one of important protection means of rights in administrative process. According to this Recommendation, the prohibition by court may be of three types: temporary cease of act execution, restoration of status quo, and assignment of relevant commitments to administration.

It should be noted that the legal literature indicates two main forms of the dealt institute – cease of administrative act execution and prohibition of relevant action by court [15, p.88]. The cease of act execution assessed as one of vertical protection mechanism of rights has an exceptional importance from the angle of protecting the citizen rights. Because sometimes the fact of claimant's application with an administrative claim to the court is not sufficient for ceasing the illegal activity of an administrative body. Even on the contrary, there are such cases in practice when a responsible person continues taking various actions in a sequential order in order to achieve his goals by speeding up his illegal activity.

The normative legal basis of administrative court execution based on the Constitution of the Republic of Azerbaijan and guiding to national-historical statehood features, an advanced international practice in this area along with serving to its development, also serves to more efficient protection of human rights and freedoms, formation of a more advanced relations between citizens and administrative bodies, and a public trust towards courts and elimination of corruption and bureaucracy.

In parallel with dealing with works implemented in the area of legal regulation of administrative court execution, the established legislative framework, observed advanced tendencies, it is also possible to make relevant contribution to efficient legal regulation by touching the existing problems in this area and studying their root causes.

### **Research Methodology**

The methodological basis of research work comprises both all-scientific methods (systematic-functional approach, formal-logical (analytical) and special law science methods (comparative law, systematic analysis, generalization of theoretical and normative materials). All these enabled approaching the issues related to constitution-legal regulation of administrative court execution from a new position, and put forward grounded proposals pertaining to improvement of legislation in this area.

### **Outcome and Proposals**

Thus, the research conducted on the theme enabled the following conclusions:

1. The establishment of administrative courts may be assessed as natural continuation of strengthening the prestige of court power in a legal state. Although the formation of administrative-economic courts partially conforms to the specialized approach idea towards organization of court execution in our country, there is a lot of work to be done for improving their activity. In our view, first of all, it is inevitable to envision the administrative court execution as one of types of court execution in the Constitution and separate the administrative courts from economic courts.

In the Chapter VII entitled as “Court Power” of the Main Law, the procedure of realizing the court power of the Republic of Azerbaijan, its main principles and conditions, the court system, as well as, the court decisions and their execution rules are identified. The Constitution reflected the execution of court power through Constitution, civil and criminal court execution means and other means envisioned by law. We should note that although the administrative court execution is not envisaged among these means, through the definition “other means envisioned by law” legal opportunity was envisioned for legislative new means. In parallel, we consider that in order to eliminate this problem, the expression “administrative court execution” should be added to paragraph 3, Article 125 of the Constitution envisioning the realization of court power.

Furthermore, a general concept should be drafted with regard to realization of administrative court execution in the country, the scope of administrative jurisdiction should be identified, special judge personnel should be trained, as well as, inter-region administrative courts should be established. In order to provide the protection for citizens against the anarchy of local executive bodies the establishment of administrative courts on regions would serve the purpose.

2. It is known that the essence of administrative process and administrative court execution is conditioned with tasks it is confronted with. The efficiency of administrative court execution depends on real and precise stipulation of its duties in legislation, and existence of sufficient procedural and other means for achieving them. The content of these tasks comprises the protection of rights and freedoms, interests protected by law which have been violated or assumed to be violated by administrative bodies, and the adoption of legal and grounded decision by thorough, objective, timely and full investigation of administrative case reviewed at the court. The identification of certain legal influence means, procedural rules and principles in legislation namely serves the achievement of these duties.

There are multiple approaches with regard to duties of administrative court execution in science. Since these approaches were considered in the previous chapters,

we do not deem it serves the purpose to go through them again. In order to put an end to variety of these approaches, there is a need for precise stipulation of duties for this branch of court execution in legislation.

It is believed that it would better serve the purpose to define the Chapter II “Principles of Administrative Court Execution” as “Duties and Principles of Administrative Court Execution” and entitlement of the first provision of chapter as “Duties of Administrative Court Execution”. I propose identifying that Article with the following content: “The duties of administrative court execution include the restoration of rights and freedoms, interestes protected by law which were either violated or presumed to have been violated by administrative bodies adoption of legal and grounded devision based on timely, thorough, objective and full investigation of a reviewed administrative case, realization of activity of administrative bodies in the legal frame and prevention of cases with regard to violation of rights and freedoms, legal interests through corruption, anarchy, abuse of judgement powers and other means.”

3. In the application of administrative procedural legislation, one of the issues emerged is the non-determination of definition of an administrative legal dispute in the Code. The administrative legal dispute as being the basis for emergence of an administrative court execution and accordingly, of an administrative process is a type of relations created among the administrative legal dispute subjects where contradictiong of legal significance exist between the parties. The administrative dispute as one of types of legal dispute should be assessed not as legal pathology, but as a tool for executing the protection right. The constructive nature inherent in legal dispute is manifested in legal protection, legal legal restoration, oversight, information and other functions of an administrative legal dispute.

We consider that by not providing the definition “administrative dispute” in Administrative Procedural Code of the Republic of Azerbaijan, the lack of precise identification of qualities and content of such disputes in the legislation cause such misunderstandings in court practice. Non-indication of definition of an administrative legal dispute in legislation exerts its negative influence over the identification of relevance criteria of administrative cases.

As such, the scope and types of administrative legal disputes increase regularly in a democractic society and becomes more complicated contentwise. As a result, the precise identification of relevance issue of administrative disputes cause difficulties both for court bodies and a claimant in practice, and result in time loss, and delay on the dispute solution. This issue cause some misunderstandings in the court practice.

The essence of administrative dispute is expressed in the existence of disparity of opinons between a citizen and an administrative body with regard to application of

material legal norms defining the rights and duties, and behavior rules of administrative legal relation participants. The administrative-legal dispute acts as complex material-procedural administrative law relation characterized with existence of contradictions arising from interests and rights conflict protected by law in state governance or self-governance area. Its emergence in any case is related to formation of an understanding as to the violation or future violation of rights and interests of one of the administrative legal relation parties by the action (inaction) of another party. In our view, if the definition of administrative dispute, its qualities, composition elements are specified in the law, misunderstandings may be ended with regard to claim possibility, essence and the relevance rules among the courts.

4. One of the issues causing discussion in the legal regulatory mechanism of administrative court execution is the subject matter of administrative claims. As such, in Article 2 Administrative Procedural Code of the Republic of Azerbaijan, a certain misunderstanding is reflected in the content classifying the claims in the order of administrative court execution. The Article indicated both the a person's rights and duties (Article 2.2.1), and the freedoms (Article 2.2.4) as subject matter in the types of legislative claims. When viewing the logic of the Article, one may come to a conclusion that the interests of a person protected by law do not act as the subject matter of claims reviewed in the order of administrative court execution. Although, another Article defining the possibility of claim indicates that (Article 35.1), in cases of justifying the violation of a person's rights and interests "protected by law", the following claims are considered possible:

- claims regarding the disputing;
- claims regarding the forcing;
- claims regarding the fulfillment of commitments;
- claims regarding the avoidance of doing certain actions.

Thus, although the legislation defines the subject matter of claims regarding the disputing, forcing, fulfillment of commitments, avoidance from doing certain actions being as interests protected by law, it does not define the interests as subject matter in the Article classifying the administrative claims. Although the interests protected by law act as impetus of humans' activities, specific relation towards the reality they cover, possession of certain subject matter and as attempt to make it useful for meetings its needs.

In case of subject matter being determined in legislation, it may bring clarity to disputed opinions both in science and practice. In our view, one may distinguish two main types of administrative dispute according to its subject matter:

1) disputes regarding the objective administrative law, that is, disputes the subject matter of which comprises the lawfulness of only administrative acts.

The disputes regarding the objective administrative law emerge from the assessment of lawfulness of one or another act of administrative bodies. One of their characteristics comprise the interference into the interests namely protected by law. In these disputes the assessment of lawfulness of a matter with objective legal nature, that is, of the disputed exceptionally acts as a subject matter. Therefore, the disputed act itself becomes the subject matter of objective dispute.

2) The disputes regarding the subjective administrative law, that is, the disputes the subject matter of which comprise the subjective rights, duties and interests by law of participants of general legal regulations.

Institutes ensuring the protection of a human's subjective rights play an important role in a legal state. The subjective rights, on the one hand, are aimed at the strengthening of social role of state, and, on the other hand, limitation of general government by ensuring the personal interests of citizens. Therefore, the provision measures of realization of general rights are of great significance. One of such provisions is the disputing of actions and acts of administrative bodies in administrative courts.

Since the subject matter of disputes on subjective administrative law is related to both the lawfulness of legal acts and actions of an administrative body and subjective rights and duties, the subject matter is of "double" nature. The court does not only review the case regarding the lawfulness of act, but also resolves the dispute on subjective right. The specific feature of dispute pertaining to subjective administrative law is that an inclusion to its subject matter of the matter related to the lawfulness of act or action of an administrative body is not always an absolute condition. The matter regarding the lawfulness of an act (action) becomes a subject matter of the dispute only in case when there is a connection between the adoption of any act or conduct of any action and a person's subjective rights, duties or legal interests.

We believe that as one of development perspectives of administrative procedural legislation, the expansion of subject matter of legal dispute and the coverage of the following issues would serve the purpose:

- 1) subjective rights, duties and freedoms;
- 2) personal interests protected by law and general interests arising from public demand;
- 3) lawfulness of administrative acts;
- 4) purposefulness of administrative acts;
- 5) adoption of administrative acts in the jurisdictions of administrative bodies;



- 6) conformity of administrative acts to procedural rules;
- 7) administrative actions;
- 8) lawfulness of normative acts;
- 9) property requirement with regard to solution of administrative disputes;
- 10) the requirement for paying compensation for the damage caused, etc.

5. While dealing with problems of administrative procedural legislation we should mention that although a representative status is stipulated in the AR APC in effect, the representative was not related to the list of participants of administrative court execution. Despite the stipulation of procedural representative in Chapter VI of the Code (Article 31), the scope of administrative court execution participants is referred to only claimant, responsible person and third parties involved in administrative court execution (Article 27 of Administrative Procedural Code of the Republic of Azerbaijan). In my view Article 27 titled “Participants of Administrative Court Execution” renamed as “Persons Participating in the Case” and addition of parties and representatives of third persons to this category, like in Ukraine, would better serve the purpose. As such, the administrative execution in addition to meaning the court activity with regard to reviewing and resolving the administrative cases, also envisions the activity of other subjects who enter into procedural relations by court and fulfill the procedural rights and duties.

One of existing shortcomings in Administrative Procedural Code of the Republic of Azerbaijan is the non-identification of the definition “party”. Although the claimant and the responsible persons are identified as participants of administrative court execution, the essence and structure of “party” definition was not disclosed. The legislation neither indicated the composition, nor those who could be the party. The names of parties are mentioned only in Article 27 in APC as participants of administrative court execution.

In my view, the inclusion of Article titled as “Parties” to Administrative Procedural Code of the Republic of Azerbaijan and the identification of the following paragraphs as content of Article would be purposeful:

- 1) The claimant and the responsible person act in the capacity of party in administrative process.
- 2) The citizens of the Republic of Azerbaijan, the expatriates, and persons without citizenship may become claimants in the administrative case.
- 3) An administrative body acts as responsible person in the administrative process.

6. We consider that envisioning the pre-court solution mechanism of administrative dispute from the viewpoint of minimizing the burden of work of

administrative courts would serve the purpose. Envisioning the direct application to the court for the solution of administrative dispute in legislation cause the prolongation of the dispute solution, increase of claimant's moral-psychological tension and intensification of work burden of courts. Acting by courts not as initial, but as second instance in the review of administrative disputes would better serve the purpose. The application by a person whose rights or interests have been violated first to the relevant higher body in the administrative order, then to administrative court in case of failure in dispute solution, would cause a more adequate result. As opposed to court process, this method efficient both timewise, and from material aspect, would enable the efficient solution of the case for the protection of his/her rights and interests and a quicker reaction by citizen to the action of a relevant administrative body.

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